

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 20-0631

Introduced by: President Scott, Councilmembers Clarke, Middleton, Bullock, Reisinger, Dorsey,
Cohen, Pinkett, Burnett

Introduced and read first time: October 19, 2020

Assigned to: Taxation, Finance and Economic Development Committee

Committee Report: Favorable with an amendment

Council action: Adopted

Read second time: November 16, 2020

AN ORDINANCE CONCERNING

Excise Tax – Electronic Smoking Devices

FOR the purpose of repealing current Subtitle 27 {“Tobacco Tax”} as abrogated by function of law; establishing an excise tax on the distribution of electronic smoking devices; setting the rate of the tax; defining certain terms, authorizing the Director of Finance to issue certain regulations; providing for collection of the tax and payment of interest and penalties; providing for a special effective date.

BY repealing

Article 28 - Taxes

Subtitle 27 {“Tobacco Tax”}, in its entirety

Baltimore City Code

(Edition 2000)

BY adding

Article 28 - Taxes

Section(s) 27-1 to 27-11, to be under the new subtitle,

“Subtitle 27. Electronic Smoking Devices”

Baltimore City Code

(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That City Code Article 28, Subtitle 27 {“Tobacco Tax”} is repealed in its entirety.

SECTION 2. AND BE IT FURTHER ORDAINED, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 28. Taxes

SUBTITLE 27. ELECTRONIC SMOKING DEVICES

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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1 **§ 27-1. DEFINITIONS.**

2 (A) *IN GENERAL.*

3 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

4 (B) *DEALER.*

5 “DEALER” MEANS ANY PERSON WHO ENGAGES IN THE RETAIL SALE OF ELECTRONIC
6 SMOKING DEVICES.

7 (C) *DIRECTOR.*

8 “DIRECTOR” MEANS THE DIRECTOR OF FINANCE OR THE DIRECTOR’S DESIGNEE.

9 (D) *DISTRIBUTOR.*

10 “DISTRIBUTOR” MEANS:

11 (1) A PERSON WHO SUPPLIES AN ELECTRONIC SMOKING DEVICE TO A DEALER WITHIN
12 THE CITY; OR

13 (2) A PERSON WHO SUPPLIES AND SERVICES A VENDING MACHINE WITH AN
14 ELECTRONIC SMOKING DEVICE.

15 (E) *ELECTRONIC SMOKING DEVICES.*

16 (1) *IN GENERAL.*

17 “ELECTRONIC SMOKING DEVICE” MEANS A DEVICE THAT CAN BE USED TO DELIVER
18 AEROSOLIZED OR VAPORIZED NICOTINE TO AN INDIVIDUAL INHALING FROM THE
19 DEVICE.

20 (2) *INCLUSIONS.*

21 “ELECTRONIC SMOKING DEVICE” INCLUDES:

22 (I) AN ELECTRONIC CIGARETTE, AN ELECTRONIC CIGAR, AN ELECTRONIC
23 CIGARILLO, AN ELECTRONIC PIPE, AN ELECTRONIC HOOKAH, A VAPE PEN, AND
24 VAPING LIQUID; AND

25 (II) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, ANY
26 COMPONENT, PART, OR ACCESSORY OF AN ELECTRONIC SMOKING DEVICE
27 REGARDLESS OF WHETHER OR NOT IT IS SOLD SEPARATELY, INCLUDING ANY
28 LIQUID SUBSTANCE INTENDED TO BE AEROSOLIZED OR VAPORIZED DURING USE
29 OF THE DEVICE.

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1 (3) *EXCLUSIONS.*

2 "ELECTRONIC SMOKING DEVICE" DOES NOT INCLUDE:

3 (I) A DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED FOR SALE BY THE
4 U.S. FOOD AND DRUG ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG,
5 AND COSMETIC ACT; OR

6 (II) ANY BATTERY OR BATTERY CHARGER THAT IS SOLD SEPARATELY.

7 (F) *PERSON.*

8 "PERSON" MEANS:

9 (1) AN INDIVIDUAL;

10 (2) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
11 KIND; OR

12 (3) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR
13 REPRESENTATIVE OF ANY KIND.

14 (G) *SUPPLYING; SUPPLIES.*

15 (1) "SUPPLYING" OR "SUPPLIES" MEANS THE ACT OF PROVIDING, FURNISHING,
16 DELIVERING, DISTRIBUTING, OR TRANSMITTING AN ELECTRONIC SMOKING DEVICE BY A
17 DISTRIBUTOR TO A DEALER WITHIN THE CITY.

18 (2) FOR PURPOSES OF THIS SUBTITLE, THE ACT OF SUPPLYING ELECTRONIC SMOKING
19 DEVICES TO A DEALER OPERATING IN THE CITY IS COMPLETED, AND TAX LIABILITY
20 ACCRUES, ON RECEIPT OF THE DEVICES BY THE DEALER IN THE CITY.

21 **§ 27-2. TAX IMPOSED.**

22 AN EXCISE TAX IS LEVIED AND IMPOSED ON EVERY DISTRIBUTOR WHO SUPPLIES AN
23 ELECTRONIC SMOKING DEVICE TO A DEALER WITHIN THE CITY.

24 **§ 27-3. AMOUNT OF TAX.**

25 THE AMOUNT OF THE TAX IS 30% OF THE WHOLESALE PRICE OF THE ELECTRONIC SMOKING
26 DEVICE.

27 **§ 27-4. WHEN PAYABLE; MONTHLY REPORTS.**

28 (A) *IN GENERAL.*

29 THE TAX IMPOSED BY THIS SUBTITLE:

30 (1) IS DUE WHEN THE DEALER RECEIVES THE ELECTRONIC SMOKING DEVICE; AND

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1 (2) MUST BE PAID ON OR BEFORE THE 25TH DAY OF THE MONTH FOLLOWING THE
2 MONTH IN WHICH THE DEALER RECEIVED THE ELECTRONIC SMOKING DEVICE.

3 (B) *REMITTANCE AND REPORT.*

4 (1) THE DISTRIBUTOR MUST REMIT THE TAX TO THE DIRECTOR, TOGETHER WITH A
5 MONTHLY REPORT OF ALL ELECTRONIC SMOKING DEVICES THAT THE DISTRIBUTOR
6 SUPPLIED TO DEALERS OPERATING IN THE CITY.

7 (2) THE REPORT MUST:

8 (I) BE IN A FORM THE DIRECTOR APPROVES; AND

9 (II) IDENTIFY THE NUMBER OF ELECTRONIC SMOKING DEVICES SUPPLIED.

10 **§ 27-5. DEALER SELF-TRANSPORT.**

11 (A) *DEALER LIABLE ABSENT CERTIFICATION.*

12 IF ANY DEALER TRANSPORTS ELECTRONIC SMOKING DEVICES INTO THE CITY OR CAUSES
13 ELECTRONIC SMOKING DEVICES TO BE TRANSPORTED INTO THE CITY, THE DEALER IS
14 LIABLE FOR THE PAYMENT OF THE TAX IMPOSED BY THIS SUBTITLE, TOGETHER WITH ALL
15 APPLICABLE INTEREST AND PENALTIES, UNLESS THE DEALER OBTAINS FROM THE SUPPLIER
16 OF THE DEVICES A WRITTEN CERTIFICATION THAT THE SUPPLIER IS LIABLE FOR AND IS
17 PAYING THE TAX.

18 (B) *FORM.*

19 THE CERTIFICATION MUST BE IN A FORM THE DIRECTOR APPROVES.

20 **§ 27-6. RECORDS.**

21 EVERY DISTRIBUTOR AND EVERY DEALER SHALL:

22 (1) KEEP COMPLETE AND ACCURATE RECORDS OF ALL TRANSACTIONS INVOLVING
23 ELECTRONIC SMOKING DEVICES, AS NECESSARY OR OTHERWISE REQUIRED BY THE
24 DIRECTOR TO DETERMINE WHETHER ALL TAXES DUE UNDER THIS SUBTITLE HAVE BEEN
25 PAID; AND

26 (2) MAKE THESE RECORDS AVAILABLE, AT ALL TIMES DURING BUSINESS HOURS, FOR
27 INSPECTION AND AUDIT BY THE DIRECTOR.

28 **§ 27-7. INTEREST AND CIVIL PENALTIES.**

29 (A) *FAILURE TO PAY.*

30 IF A DISTRIBUTOR FAILS TO PAY THE TAX IMPOSED BY THIS SUBTITLE WHEN DUE, THE
31 DISTRIBUTOR MUST PAY THE DIRECTOR, IN ADDITION TO THE TAX DUE:

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1 (1) INTEREST AT THE RATE OF 1% FOR EACH MONTH OR FRACTION OF A MONTH THAT
2 THE TAX IS OVERDUE; AND

3 (2) A PENALTY OF 10% OF THE AMOUNT OF THE TAX DUE.

4 (B) *FAILURE TO FILE REPORTS; MAINTAIN RECORDS.*

5 IF A DISTRIBUTOR FAILS TO SUBMIT THE REMITTANCE REPORTS OR FAILS TO KEEP
6 SUITABLE RECORDS AS REQUIRED BY THIS SUBTITLE, THE DISTRIBUTOR MUST PAY THE
7 DIRECTOR, IN ADDITION TO THE TAX, A PENALTY OF \$1,000 FOR EACH MONTH THAT
8 REPORTS ARE NOT SUBMITTED OR FOR EACH MONTH THAT SUITABLE RECORDS ARE NOT
9 KEPT.

10 **§ 27-8. CESSATION OF BUSINESS.**

11 IF A PERSON REQUIRED TO PAY A TAX UNDER THIS SUBTITLE CEASES TO DO BUSINESS OR
12 OTHERWISE DISPOSES OR SELLS THE BUSINESS:

13 (1) ANY TAX PAYABLE UNDER THIS SUBTITLE BECOMES IMMEDIATELY DUE AND PAYABLE;
14 AND

15 (2) WITHIN 3 DAYS OF THE CESSATION OR OTHER DISPOSAL OF BUSINESS, THAT PERSON
16 MUST SUBMIT THE REQUIRED REPORT AND REMIT THE TOTAL AMOUNT OF THE TAX
17 DUE.

18 **§ 27-9. LIEN ON PROPERTY.**

19 THE TAX, INTEREST, AND PENALTIES IMPOSED BY THIS SUBTITLE ARE A LIEN ON THE PROPERTY
20 OF ANY PERSON LIABLE FOR THEIR PAYMENT.

21 **§ 27-10. RULES AND REGULATIONS.**

22 (A) *DIRECTOR MAY ADOPT.*

23 THE DIRECTOR MAY ADOPT RULES AND REGULATIONS AS NECESSARY OR APPROPRIATE TO:

24 (1) GOVERN THE PAYMENT, COLLECTION, AND ACCOUNTING OF THE TAX IMPOSED BY
25 THIS SUBTITLE;

26 (2) DEFINE ANY TERMS USED IN CONNECTION WITH THE IMPOSITION AND COLLECTION
27 OF THE TAX IMPOSED UNDER THIS SUBTITLE;

28 (3) PROVIDE FOR THE CREDIT OF ANY TAX PAID ON RETURNED DEVICES;

29 (4) PROVIDE FOR THE REFUND OF ANY TAX, INTEREST, OR PENALTY ERRONEOUSLY OR
30 ILLEGALLY PAID; AND

31 (5) OTHERWISE ADMINISTER, ENFORCE, AND CARRY OUT THIS SUBTITLE.

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1 (B) *COPIES TO BE FILED WITH LEGISLATIVE REFERENCE.*

2 A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SECTION MUST BE FILED
3 WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY BECOME EFFECTIVE.

4 **§ 27-11. PENALTIES.**

5 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR OF ANY RULE OR
6 REGULATION ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON
7 CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR NOT
8 MORE THAN 12 MONTHS OR TO BOTH FINE AND IMPRISONMENT FOR EACH OFFENSE.

9 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
10 are not law and may not be considered to have been enacted as a part of this or any prior
11 Ordinance.

12 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
13 enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City